



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 10-06824
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David P. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

January 20, 2012

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). Her eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 6, 2010. On March 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On March 25, 2011, Applicant answered the SOR in writing and requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on June 20, 2011. The FORM contained documents

identified as Items 1 through 7. In addition, the Government compiled facts about Taiwan from 13 official U.S. government publications<sup>1</sup> and requested that I take administrative notice of those facts. By letter dated August 17, 2011, DOHA forwarded a copy of the FORM, which included the factual summary containing information about Taiwan, to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on August 19, 2011. Her response was due on September 18, 2011.

Applicant did not submit any information within the time period of 30 days after receiving a copy of the FORM. On October 7, 2011, the case was assigned to me for a decision.

### Findings of Fact

The SOR contains three allegations that raise security concerns under Guideline C, Foreign Preference (SOR ¶¶ 1.a. through 1.c.) and six allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 2.a. through 2.f.) In her Answer to the SOR, Applicant admitted one Guideline C allegation (SOR ¶ 1.a.) and denied two Guideline C allegations (SOR ¶¶ 1.b. and 1.c.) She admitted all six Guideline B allegations. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

In June 2010, Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) about her citizenship status, her possession of a foreign passport, her foreign national contacts, and her foreign travel. In October 2010, she also responded to interrogatories sent to her by DOHA, and she

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<sup>1</sup> The documents cited by the Government in its recitation of facts about Taiwan and the PRC are as follows: Office of the National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* – 2008, dated July 23, 2009; Office of the National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* – 2000; Statement of Facts, *United States v. Keyser*, Case No. 1:05CR543, in the United States District Court for the Eastern District of Virginia, dated December 12, 2005; United States Attorney's Office, Eastern District of Virginia, *Former State Department Official Sentenced for Mishandling Classified Material*, dated January 22, 2007; U.S. Department of Commerce, Bureau of Industry and Commerce, *California Exporter Fined in Connection with Attempted Taiwan Export*, dated September 30, 1999; U.S. Department of Commerce, Bureau of Industry and Commerce, *Commerce Department Imposes Civil Penalty on Minnesota Firm in Settlement of Export Violations*, dated December 20, 2001; U.S. Department of Commerce, Bureau of Industry and Commerce, *Connecticut Company Settles Charges Concerning Unlicensed Pump Exports to China, Taiwan, Israel, and Saudi Arabia*, dated July 28, 2003; U.S. Department of Commerce, Bureau of Industry and Commerce, *Encore Corporation Settles Charges of Export Control Violations*, dated January 26, 2004; U.S. Department of Commerce, Bureau of Industry and Commerce, *Parker Hannifan Corp. Settles Charges Pertaining to Illegal Exports to Taiwan and China*, dated November 17, 2005; U.S. Department of Commerce, Bureau of Industry and Commerce, *Defendants Indicted on Charges of Conspiracy to Export Controlled Items*, dated August 19, 2005; *United States v. Ching Kan Wang and Robin Chang*, Case No. 05-60218-CR-SEITZ/001 (S.D.FLA.), Superseding Indictment (filed October 6, 2005) and Judgment in a Criminal Case (filed March 7, 2006); U.S. Department of Commerce, Bureau of Industry and Commerce, *Taiwan Exporter Arrested and Charged with Exporting Missile Components from the U.S. to Iran*, dated February 4, 2010; and Interagency OPSEC Support Staff (IOSS), *Interagency Threat Handbook*, [Unclassified/For Official Use Only], June 2004.

provided certified photocopies of her most recent Taiwanese and U.S. passports. (Item 6; Item 7.)

Applicant is 58 years old, married, and the mother of two adult children. She is employed by a government contractor as a backend database developer. She seeks a security clearance for the first time. (Item 5.)

Applicant was born and raised in Taiwan. In 1984, she came to the United States to join her husband, a citizen of Taiwan, and to pursue full-time graduate study. The couple's first child was born in the United States in 1985. Soon thereafter, Applicant returned to Taiwan with her infant daughter and left the child in the care of her mother. In her June 2010 personal subject interview, Applicant stated that she and her husband were unable to care for the child while they were pursuing full-time graduate studies. (Item 6.)

In 1986, Applicant earned a master's degree at a U.S. university. In 1996, Applicant and her husband, who is an information technology specialist, became naturalized U.S. citizens. In 2007, Applicant acquired a U.S. passport. In 2008, Applicant applied for and was issued a Taiwanese passport, which will expire in 2018. On her e-QIP and in her personal security interview in June 2010, Applicant identified herself as a dual citizen of Taiwan and the United States. On her e-QIP, Applicant also stated that she had surrendered her Taiwanese passport to her employer's facility security officer on May 6, 2010. The record does not contain documentation from the employer's facility security officer confirming that she has possession of Applicant's Taiwanese passport. (Item 5; Item 6.)

In her answer to the SOR, Applicant denied she exercised dual citizenship, since she no longer possessed her Taiwanese passport. However, in her security interview, Applicant stated she was not sure if her employer would return the passport to her if she were to leave and seek employment elsewhere. Applicant said she wanted to retain her Taiwanese passport if at all possible to make it easier to travel back to Taiwan.<sup>2</sup> (Item 6.)

Applicant told the investigator that she also wished to claim dual citizenship because she will be eligible to retire in six years, and she and her husband may decide to return to live in Taiwan during their retirement. She opined that she and her husband could live well in Taiwan as the result of their U.S. income, savings, and retirement benefits. Applicant stated that she and her husband had not decided to retire to Taiwan, but she did not want to foreclose that option for them by giving up her dual citizenship. Applicant also said that if her dual citizenship prevented her from acquiring a security

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<sup>2</sup> Applicant explained that if she used her U.S. passport to travel to Taiwan, she was required to submit additional documentation to extend her visa and her stay beyond 30 days. If she used her Taiwan passport to travel to Taiwan, however, she could stay as long as she wished and was not required to bring and to submit additional documentation to extend her visa. (Item 4; Item 6.)

clearance, she would give serious thought to relinquishing dual citizenship status. (Item 6.)

Applicant's mother, who is retired, is a resident and citizen of Taiwan. Applicant speaks with her mother once a month on the telephone. She returns to Taiwan about once a year to visit her mother. Applicant's mother-in-law is also a resident and citizen of Taiwan. Applicant speaks with her on the telephone every three months, and she visits her once a year when she returns to Taiwan. (Item 6.)

Applicant's two brothers and two sisters are also residents and citizens of Taiwan. Applicant speaks on the telephone with one of her brothers, a warehouse employee, twice a month, and she visits him in Taiwan about once a year. Applicant does not speak on the telephone with her other brother, an insurance employee, but she visits him in Taiwan approximately once each year. One of Applicant's sisters is retired; the other sister's occupation is not identified in the record. Applicant speaks on the telephone once a month with one of her sisters, and she speaks on the telephone every other month with her other sister. She visits both sisters about once each year when she returns to Taiwan. (Item 6.)

Applicant traveled to Taiwan in 2004, 2007, and November 2008. The SOR alleged that Applicant used her Taiwanese passport to travel to Taiwan in 2008. Applicant denied the SOR allegation and asserted that she carried both her U.S. and her Taiwanese passports when she traveled to Taiwan in November 2008. (Item 1; Item 4.)

Applicant also visited the People's Republic of China (PRC) in 2003, 2004, 2006, 2007, and 2008. She stated that these trips were for leisure and sightseeing, and she used her U.S. passport when visiting the PRC. She stated that since both Taiwan and the PRC have a common language, Mandarin Chinese, communication was not difficult for her. (Item 4; Item 6.)

I take administrative notice of the following facts about Taiwan, as provided by the Government in the FORM:

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists Taiwan, along with seven other countries, as being involved in criminal espionage and export controls enforcement cases in 2008. The 2000 version of that report specifically lists Taiwan as being among the most active collectors of U.S. economic and proprietary information and highlights specific incidents wherein Taiwan engaged in attempts to acquire export-restricted products.

There have been various cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Taiwan, including:

Classified materials;  
Laser gun aiming devices/sights;  
Measuring probes controlled for nuclear non-proliferation and national security reasons;  
Centrifugal pumps that are controlled for chemical and biological weapons and anti-terrorism reasons;  
Metal organic vapor disposition tools controlled for national security and anti-terrorism reasons;  
Fluid control valves that are controlled for national security, foreign policy, non-proliferation or anti-terrorism reasons;  
Radio communication encryption modules;  
Missile components shipped to Iran by way of Taiwan.

The PRC's Ministry of State Security is the "preeminent civilian intelligence collection agency in China," and it maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals with Taiwan connections.

(FORM at 3-6; footnotes and citations omitted.)

### **Burden of Proof**

The Government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the Government must establish by substantial evidence a *prima facie* case that it is not clearly consistent with the national interest for an applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline C, Foreign Preference

Under AG ¶ 9, the security concern involving foreign preference arises “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States.” Such an individual “may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant was born and raised in Taiwan. She became a U.S. citizen in 1996, and she acquired a U.S. passport in 2007. In 2008, she acquired a Taiwanese passport,

which she possessed up until the time she completed her e-QIP in May 2010. She carried the Taiwanese passport and her U.S. passport when she traveled to Taiwan in November 2008. Acquiring and using a Taiwanese passport after becoming a U.S. citizen raises a concern that Applicant actively exercises dual citizenship with Taiwan and suggests a preference for a foreign country over the United States. I conclude that Applicant's conduct raises potentially disqualifying security concerns under AG ¶10 (a)(1).

Under AG ¶11(a), dual citizenship might be mitigated if "it is based solely on [an applicant's] parents' citizenship or birth in a foreign country." Under AG ¶11(b), an individual's dual citizenship might be mitigated if he or she "has expressed a willingness to renounce dual citizenship." Under AG ¶11(c), an individual's "exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor." Under AG ¶11(d), an individual's use of a foreign passport might be mitigated if it were "approved by the cognizant security authority." Under AG ¶11(e), an individual's use of a foreign passport might be mitigated if he or she presents credible evidence that "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Applicant claimed dual citizenship on the e-QIP she completed in May 2010 and in her personal security interview in June 2010. After becoming a U.S. citizen in 1996 and acquiring a U.S. passport in 2007, she acquired a Taiwanese passport in 2008 and carried it, along with her U.S. passport, when she traveled to Taiwan in November 2008. She carried the Taiwanese passport so that she might use it, if necessary, to extend her stay in Taiwan without filing a request for an extension of the visa she acquired under her U.S. passport. Nothing in the record establishes that Applicant's use of her Taiwanese passport for this purpose had been approved by a cognizant security authority. However, when she was interviewed by an authorized investigator, she stated she would like to retain her dual citizenship with Taiwan so she might retire in Taiwan. She also stated that she would be willing to renounce her dual citizenship in order to obtain a security clearance. She reported on her e-QIP that she had surrendered her Taiwanese passport to her employer's facility security officer in May 2010; however, the record contains no credible evidence from the facility security officer confirming that she has taken possession of Applicant's valid Taiwanese passport. Applicant stated that she hopes to have her Taiwanese passport returned to her when she leaves her present employer.

When Applicant acquired her Taiwanese passport in 2008, she was 55 years old and a U.S. citizen. The record demonstrates that Applicant is ambivalent about her dual citizenship and has a preference for Taiwan. I conclude that AG ¶¶ 11(a), 11(c), and 11(d) do not apply to the facts of Applicant's case. Additionally, I conclude that that AG ¶¶ 11(b) and 11(e) apply only in part in mitigation to the facts of her case.



## **Guideline B, Foreign Influence**

Under Guideline B, Foreign Influence, “[f]oreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest.” AG ¶ 6.

Additionally, adjudications under Guideline B “can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

I have considered all of the disqualifying conditions under the foreign influence guideline. Applicant’s close contacts and relationships with family members who are citizens and residents of Taiwan raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b). AG ¶ 7(a) reads: “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” AG ¶ 7(b) reads: “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.”

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant’s case. If “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.,” then AG ¶ 8(a) might apply. If “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” then AG ¶ 8(b) might apply. If “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation,” then AG ¶ 8(c) might apply.

Two additional Guideline B allegations also raise security concerns. While the United States and Taiwan share common democratic values, Taiwan is known to be an active collector of U.S. economic and proprietary information that could assist in strengthening its defensive position, and it has targeted U.S. government organizations in order to acquire U.S. technology. American citizens with immediate family members who are citizens or residents of Taiwan could be vulnerable to coercion, exploitation,

inducements, or pressure by those seeking to acquire proprietary or otherwise restricted U.S. technology for the benefit of Taiwan. American citizens of Taiwanese background who travel to Taiwan are also possible targets for exploitation by the PRC's Ministry of State Security.

Applicant's mother, mother-in-law, two brothers, and two sisters are citizens and residents of Taiwan. Applicant communicates with several of her family members regularly by telephone, and she visits all of her family members about once yearly when she travels to Taiwan.

Applicant's relationships with her mother, four siblings, and her mother-in-law are neither casual nor infrequent, but are based on long-standing family ties of affection and obligation. Applicant is in close familial contact with her mother and one of her brothers. While she communicates less frequently with three of her siblings and her mother-in-law, she nevertheless has long-standing familial obligations to them.

Taiwan is an active collector of U.S. proprietary information. The PRC maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals with Taiwan connections. Applicant travels to Taiwan frequently. She is attentive and loyal to her family members in Taiwan. If Applicant were to continue her travel to Taiwan as a federal contractor with a security clearance, this could raise additional conflict of interest concerns that might also threaten U.S. security interests. Applicant failed to meet her burden of providing information to rebut or mitigate the security concerns raised by AG ¶¶ 7(a) and 7(b). I therefore conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested she was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is an intelligent and well-educated professional. She has close familial ties with six family members who are residents and citizens of Taiwan. She is in frequent contact with her family members and travels to Taiwan often to visit her family members. She has not renounced her dual citizenship with Taiwan, and she has expressed a wish to retire and live in Taiwan. As a U.S. citizen, she acquired a Taiwanese passport in 2008, and she carried it, along with her U.S. passport, when she traveled to Taiwan in 2008. Taiwan actively seeks to collect proprietary information from U.S. businesses and government contractors. Because of her close relationships with Taiwanese citizens, Applicant could be vulnerable to foreign exploitation, inducement, pressure, or coercion.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence and foreign preference adjudicative guidelines.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.c.:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.e.:	Against Applicant
Subparagraph 2.f.:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge